

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 18 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**USA COMMERCIAL MORTGAGE
COMPANY,**

Appellee,

v.

**LOWE ENTERPRISES
RESIDENTIAL INVESTORS, LLC;
BOHICA LLC, d/b/a DDR Devco, LLC;
DOUBLE DIAMOND RANCH, LLC,**

Appellants.

No. 04-15855

D.C. No. CV-03-00156-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Argued and Submitted December 9, 2005
San Francisco, California

Before: **KOZINSKI** and **W. FLETCHER**, Circuit Judges, and
HOLLAND**, District Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The Honorable H. Russel Holland, Senior United States District Judge for the District of Alaska, sitting by designation.

The district court correctly held that the bankruptcy court had no authority to modify the unambiguous terms of the settlement by extending the term of appellants' option without appellee's consent. The negotiated settlement specified consecutive thirty-day options to accept assignment of the Parks Agreement, and provided that modifications to the settlement agreement had to be approved by both parties. The bankruptcy court's extension of appellants' option period was a material modification of the settlement, and thus beyond the bankruptcy court's authority under Fed. R. Civ. P. 60(b) or Fed. R. Bank. P. 9006(b). The bankruptcy court did not utilize the procedures for modifying a confirmed plan. See 11 U.S.C. § 1127.

The district court also correctly held that the bankruptcy court could not equitably excuse appellants' failure to exercise their option on time. Option contracts are strictly construed, and "negligent failure to give the required written notice" is an insufficient reason to modify the terms of the options negotiated in the settlement agreement. Host Int'l, Inc. v. Summa Corp., 583 P.2d 1080, 1082 (Nev. 1978) (per curiam).

AFFIRMED.